FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Criminal Application No. 1526/2007

Sachin Gopichand Nagdeve
Vs.
State of Maharashtra

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's orders.	Court's or Judge's Orders

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Mr. Tiwari, Advocate for applicant.
Mr. N. W. Sambre, PP for State.

Coram: C. L. PANGARKAR J.
Dated : 29th August 2007

This is an application under Section 439 of Criminal Procedure Code read with Section 21 of the Maharashtra Control Of Organised Crime Act, 1999. It is alleged by the prosecution that accused/applicant is a member of organised crime syndicate and as a member of organised crime syndicate he had committed several offences which include the offences under Sections 379, 398, 454, 380, 399, 324, 307 and

394 of Indian Penal Code, Sec. 135 of Bombay Police Act. The accused has been arrested after registration of the crime No. 3251/06 under the MCOC Act. He now seeks bail.

His application for bail has been rejected by the Court of Sessions.

I have heard the learned counsel for the applicant and the learned Public Prosecutor for the State.

Continuing unlawful activity has been defined as an activity prohibited by law, for the time being in force, which a cognizable offence punishable with imprisonment of three years or more, undertaken either by singly or jointly, as a member of the organised crime syndicate or on behalf of such syndicate in respect of which more than one charge sheets have been filed before the competent Court within the preceding period of ten years and that Court has taken cognizance

of such offence. Organised crime syndicate has been defined as continuing unlawful activity by an individual, singly or jointly, either as a member of organised crime syndicate or on behalf of such syndicate by use of violence or threat of violence or intimidation or coercion, or other unlawful means with the objective of gaining pecuniary benefit or gaining undue economic or other advantage for himself or for any other person. It is, therefore, obvious that when the accused is being charged under the Act it must be shown that atleast two charge sheets have been filed against him and the Court must have taken cognizance of those two charge sheets. It is clear from th above two definitions that the crime must relate to gaining pecuniary benefit or gaining undue economic or other advantage for himself. It was contended on behalf of the prosecution that Items No.5 and 8

would show that accused is involved in two such crimes.

Mr. Tiwari learned counsel for the applicant submits that as far as item No.5 is concerned accused was actually acquitted by the Court of Sessions on 06.04.05. This charge sheet has been filed on 16.05.06. Obviously on 16.05.06 the Items No. 5 could not have been taken into account for charging the accused/applicant under MCOC Act. As far as other offences are concerned it is not disputed even by the learned Public Prosecutor that they do not fall within the scope of offence which could be said to be committed for gaining pecuniary advantage. In view of this what remains is only Item No.8. If the entry No.5 is excluded apparently case could not fall within the scope of continuing unlawful activity or organised crime. In the circumstances I find that

accused is entitled to be released on bail.

Accused be released on his executing personal bond in the sum of Rs.10,000/- with two sureties in the like amount. He shall report to the police station Kalmana on every Sunday between 9 to 11 a.m. until the conclusion of the trial under MCOC Act. Hamdast allowed.

Judge.

svk